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1. *United States v. Approximately \$15,630.00 in U.S. Currency*, No. CIV. 07-0452  
FCD KJM (E.D. Cal. June 25, 2007).

2. *Young v. Coastal Island Charters*, No. CIV. S-05-1639 FCD GGH (E.D. Cal.  
Dec. 12, 2005).

Dated: October 17, 2008.

Respectfully submitted,

/s/ Eric Grant  
ERIC GRANT

Counsel for Plaintiff and  
Counter-Defendant ERIC GRANT

# Exhibit 1

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,  
Plaintiff,

NO. CIV. 07-0452 FCD KJM

v.

MEMORANDUM AND ORDER

APPROXIMATELY \$15,630.00 IN  
U.S. CURRENCY, APPROXIMATELY  
\$8,000.00 IN U.S. CURRENCY,  
APPROXIMATELY \$12,639.97 IN  
MONEY ORDERS, APPROXIMATELY  
\$60,517.00 IN U.S. CURRENCY,  
APPROXIMATELY \$14,271.00 IN  
U.S. CURRENCY, APPROXIMATELY  
\$90,000.00 IN U.S. CURRENCY,  
APPROXIMATELY \$1,820.50 IN  
MONEY ORDERS, AND  
MISCELLANEOUS SMOKELESS  
TOBACCO PRODUCTS,

Defendants.

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This matter is before the court on claimants<sup>1</sup> Jawid Wahidi  
("Jawid"), LMS International, Inc. ("LMS"), Sadiq Wahidi

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<sup>1</sup> Defendants in this case are the currency and miscellaneous smokeless tobacco products seized by the government at claimants' residences. (Compl., filed Mar. 7, 2007, ¶ 4.) By this action, the government seeks forfeiture of the currency on the ground it is the proceeds of, or traceable to, mail fraud; it seeks forfeiture of the tobacco products as contraband not legally possessed by anyone. (Opp'n, filed May 24, 2007, at 1.)

1 ("Sadiq"), and LA International, Inc.'s ("LA Int'l") motion to  
2 transfer venue pursuant to 28 U.S.C. § 1404(a). Claimants do not  
3 challenge the propriety of venue in the Eastern District of  
4 California, but argue that the Central District of California is  
5 the more appropriate forum.<sup>2</sup> Plaintiff United States of America  
6 (the "government") opposes the motion.

7 For the reasons set forth below, claimants' motion is  
8 DENIED.<sup>3</sup>

### 9 BACKGROUND

10 Claimant Jawid owns LMS, a wholesale store located at 101  
11 East 3rd Street in Los Angeles, California. (Notice of Mot. and  
12 Mot. to Dismiss, filed Apr. 29, 2007 ["Mot'n"], at 3.) Claimant  
13 Sadiq was the president of LA Int'l, a wholesale store located at  
14 340 East 3rd Street in Los Angeles, California. (Mot'n at 3-4)

15 The complaint alleges that claimants are involved in an  
16 extensive illegal network of trafficking "other tobacco products"  
17 ("OTP"), i.e. chewing tobacco, from Arizona to California.  
18 (Frederick Aff., filed Mar. 3, 2007, at ¶ 6.) Akrum Alrahib  
19 ("Alrahib") owns Sunrise Tobacco, Save a Buck Distribution, and  
20 Da Bomb Products, which are all located at 7600 North 71st Avenue  
21 in Glendale, Arizona. (Id. at ¶ 9.) Alrahib orders large  
22 quantities of OTP from manufacturers and national suppliers that  
23 he then distributes throughout California. (Id. at ¶ 23.) Ali

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24  
25 <sup>2</sup> Claimants originally contested venue in the Eastern  
26 District but then conceded venue is proper in their reply to  
27 plaintiff's opposition. (Reply, filed June 4, 2007, at 3.)

28 <sup>3</sup> Because oral argument will not be of material assistance,  
the court orders this matter submitted on the briefs. E.D. Cal.  
L.R. 78-230(h).

1 Tavaf Langroudi ("Tavaf")--the owner of Smart Buy Wholesale  
2 located at 213 East 3rd Street in Los Angeles, California--  
3 receives much of Alrahib's OTP. (Id. at ¶ 25.) Tavaf then  
4 distributes the OTP to numerous companies including claimants LMS  
5 and LA Int'l. (Id.) The government alleges this entire  
6 distribution process circumvents California's and Arizona's  
7 excise tax on OTP, resulting in a nearly fifty percent profit for  
8 the participants, and conversely, a substantial loss to the  
9 government.

10 California law requires sellers and purchasers of OTP to  
11 submit monthly tax returns to the California Board of  
12 Equalization ("BOE") and pay excise taxes on the sales. The  
13 government contends that claimants significantly under-reported  
14 its OTP purchases and thus underpaid the corresponding excise  
15 taxes due. (Frederick decl., filed May 24, 2007, at ¶ 3.) From  
16 January 2004 through October 2006, claimants LA Int'l and LMS  
17 filed fifty tobacco returns to the BOE in Sacramento. (Opp'n at  
18 3-4.)

19 Defendants in this case are property seized at LMS, LA  
20 Int'l, Jawid's residence, and Sadiq's residence during a  
21 comprehensive federal investigatory raid on October 17, 2006.<sup>4</sup>  
22 United States Magistrate Judge Jennifer T. Lum of the Central  
23 District of California signed the search warrant authorizing the  
24 search of claimants' premises and the seizure of the subject  
25 property. (Mot'n at 7.) All of the defendant property was  
26 seized in the Central District. (Id. at 3.) In addition to the

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27  
28 <sup>4</sup> See supra note 1.

1 defendant property, other property was seized including numerous  
2 financial and business records of claimants. (Opp'n at 4-5.)  
3 These records were later transferred to the Bureau of Alcohol,  
4 Tobacco, Firearms, and Explosives ("ATF") for the Eastern  
5 District of California for analysis for use in this action as  
6 well as for possible use in a related criminal mail fraud  
7 investigation. (Frederick decl. at ¶¶ 5-10.)

8 Claimants contend venue should be transferred to the Central  
9 District because the search and seizure occurred in the Central  
10 District and claimants reside there. Claimants assert they will  
11 be substantially burdened by litigating this case in the Eastern  
12 District and that any burden to the government is outweighed by  
13 the harm to them.

14 The government asserts to the contrary that venue should  
15 remain in the Eastern District because its choice of forum must  
16 be given substantial weight; claimants mailed their tax returns  
17 to the BOE in Sacramento; the numerous documents seized at LMS,  
18 LA Int'l, Jawid's residence, and Sadiq's residence are being held  
19 by the ATF in Sacramento; the government's witnesses are based in  
20 the Eastern District and would be severely burdened by a transfer  
21 to the Central District.

#### 22 STANDARD

23 Under 28 U.S.C. § 1404(a), a district court may "for the  
24 convenience of parties and witnesses, in the interest of justice  
25 . . . transfer any civil action to any other district where it  
26 might have been brought." 28 U.S.C. § 1404(a). A court has  
27 broad discretion in deciding whether or not to transfer venue  
28 pursuant to 28 U.S.C. § 1404(a). E. & J. Gallo Winery v. F. & P.

1 S.p.A., 899 F. Supp. 465, 466 (E.D. Cal. 1994). A defendant  
2 moving to transfer venue under Section 1404(a) must satisfy both  
3 of the following requirements: (1) the transferee district is one  
4 in which the action might have been brought originally; and (2)  
5 transfer will enhance the convenience of the parties and  
6 witnesses, and is in the interests of justice. See Van Dusen v.  
7 Barrack, 376 U.S. 612, 616 (1964). In considering the second  
8 requirement, the court evaluates the following:

9 (1) the plaintiff's choice of forum, (2) the  
10 convenience of the parties, (3) the convenience  
11 of the witnesses, and (4) the interest of  
12 justice.

13 L.A. Memorial Coliseum Comm'n v. Nat'l Football League, 89 F.R.D.  
14 497, 499 (C.D. Cal. 1981).

#### 15 ANALYSIS

16 Venue is proper in the Central District of California  
17 because a substantial part of the events took place there. 28  
18 U.S.C. § 1391(b)(2). Thus, the only question before the court is  
19 whether transfer to the Central District will enhance the  
20 "convenience of parties and witnesses" and will promote "the  
21 interests of justice." 28 U.S.C. § 1404(a).

22 The moving party has the burden of establishing that an  
23 action should be transferred. Commodity Futures Trading Comm'n  
24 v. Savage, 611 F.2d 270, 279 (9th Cir. 1979). Unless the balance  
25 is strongly in favor of the defendant, the plaintiff's choice of  
26 forum should rarely be disturbed. Gulf Oil Corp. v. Gilbert, 330  
27 U.S. 501, 508 (1947).

28 Here, claimants have not satisfied their burden. The  
government did not arbitrarily choose to litigate this case in

1 the Eastern District of California. All of the law enforcement  
2 officers working on this case are based in Sacramento. (Opp'n at  
3 9-10.) The seized records are located and being analyzed in  
4 Sacramento. (Id. at 10.) Also, the government's attorneys, who  
5 are based in the Eastern District, represent that they would  
6 continue to litigate this case even if it was transferred to the  
7 Central District because they have been involved in the case from  
8 the outset of the investigation and are litigating other related  
9 cases. (Id. at 11.) Under these circumstances, the court finds  
10 that transferring this action to the Central District of  
11 California would cause a significant burden to the government.

12 Moreover, while it is true that all of the property was  
13 seized in the Central District and brought here by the government  
14 for its own reasons, it is not true, as claimants contend, that  
15 claimants have no connection to the Eastern District. (Mot'n at  
16 3.) Claimants allegedly filed fifty fraudulent tax returns to  
17 the BOE office in Sacramento. (Opp'n at 10.)

18 Additionally, eleven other cases which have been spawned by  
19 this federal investigation involving the OTP trafficking scheme  
20 are pending in the Eastern District. These cases, while not  
21 consolidated, have been ruled related and are pending before the  
22 undersigned. (Related Case Order, filed May 3, 2007.) The  
23 government asserts that the documents presently held in  
24 Sacramento for this case may be necessary for the related  
25 matters.<sup>5</sup> (Frederick decl. at ¶ 7, 10.) These circumstances

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26  
27 <sup>5</sup> In addition, the government represents that an indictment  
28 in the ongoing criminal investigation involving claimants and the  
(continued...)

1 further persuade the court that venue should not be transferred.

2  
3 Despite these facts, claimants contend that the convenience  
4 of the parties warrants transfer to the Central District. The  
5 court acknowledges that Jawid works in Los Angeles and perhaps  
6 may be unable to operate his store during trial in the Eastern  
7 District; however, the court finds no authority supporting  
8 transfer on this basis alone. Indeed, the cases claimants cite  
9 in support of transfer based on Jawid's business disruption are  
10 distinguishable. Those cases dealt with transfer between *distant*  
11 states. See United States v. Russell, 582 F. Supp. 660 (S.D.N.Y.  
12 1984) (transfer from New York to Tennessee); United States v.  
13 Olen, 183 F. Supp. 212 (S.D.N.Y. 1960) (transfer from New York to  
14 Alabama); United States v. Cashen, 281 F.2d 669 (2d Cir. 1960)  
15 (transfer from New York to Alabama). Trial in Sacramento, as  
16 opposed to Los Angeles, should not present Jawid with similar  
17 difficulties. As to Sadiq, his burden is minimal. He is retired  
18 from work and his wife's generalized "poor health" is not  
19 sufficient to warrant transfer. (Mot'n at 9.)

20 As to the convenience of the witnesses, this factor is often  
21 regarded as the most important in determining whether transfer of  
22 venue is proper. United States v. One Oil Painting, 362 F. Supp.  
23 2d 1175, 1185 (C.D. Cal. 2005). A clear balance of  
24 inconvenience, however, must be shown; a court will not transfer  
25 venue to shift the inconvenience of one party and witnesses to  
26

27 <sup>5</sup>(...continued)  
28 related cases is likely and would be litigated in the Eastern  
District. (Frederick decl. at ¶¶ 7, 10.)

1 the other. See Van Dusen v. Barrack, 376 U.S. 612, 645-46  
2 (1964); Schwarzer, et al., Cal. Practice Guide, 4:786 at 91  
3 (2006).

4 Claimants argue that their witnesses will be burdened if the  
5 trial is held in the Eastern District. The government contends  
6 that claimants' witnesses will be largely irrelevant because it  
7 will base its case primarily on the business records held in  
8 Sacramento. (Opp'n at 9.) Additionally, the government asserts  
9 that some of claimants' proposed witnesses would likely not  
10 testify as they too are subjects of the same criminal  
11 investigation. (Id.) On the other hand, the government's  
12 witnesses are Sacramento-based government employees. These  
13 witnesses also would be burdened by litigation in a forum where  
14 they do not live and work. Thus, it appears that both sides'  
15 witnesses may be burdened by litigation in a forum in which they  
16 do not reside and work. When the inconvenience of the  
17 alternative venues is comparable "the tie is awarded to the  
18 plaintiff" and there is no basis for a change of venue. In Re  
19 National Presto Indus., Inc., 347 F.3d 662, 665 (7th Cir. 2003).

20 However, claimants nevertheless contend that inconvenience  
21 to *government* witnesses is not significant, but they cite no  
22 authority for their argument. (Mot'n at 15.) In fact, there is  
23 authority supporting the contrary position. Courts have held  
24 that a government agency's choice of forum is entitled to the  
25 same deference as a private party. Id. at 665 ("When government  
26 lawyers and investigators incur time and travel costs to litigate  
27 in a remote forum, the burden falls on the taxpayer, who finances  
28 the federal government and who is not less worthy of the

1 protections of the law than corporate officers, shareholders, and  
2 employees."); see Schwarzer, et al., Cal. Practice Guide, 4:760  
3 at 88 (2003). In National Presto, the Securities and Exchange  
4 Commission ("SEC") sued National Presto Industries ("Presto") in  
5 the Northern District of Illinois. National Presto, 347 F.3d at  
6 663. Presto moved to transfer the case to the Western District  
7 of Wisconsin, arguing that multiple factors supported a transfer  
8 of venue. Id. at 664. These factors included that its potential  
9 witnesses resided in the Western District, the original documents  
10 in the case were located in the Western District, and the Northern  
11 District of Illinois had a heavier docket than the Western  
12 District. Id. The court refused to transfer venue to the  
13 Western District despite acknowledging that the only factors in  
14 favor of venue remaining in Illinois were the convenience to the  
15 SEC and the SEC's choice of forum. Id.

16 Claimants attempt to distinguish National Presto,  
17 emphasizing that there, the SEC did not have an office in the  
18 transferee district. Here, claimants stress that the government  
19 could litigate this case from its offices in the Central  
20 District. While this fact is true, it does not compel the court  
21 to transfer venue. As recognized by the court in SEC v. Savory  
22 Indus., Inc., 587 F.2d 1149, 1155 (D.C. Cir. 1978), an office in  
23 the transferee district is more relevant to the question of  
24 whether the choice of that district is convenient to the  
25 plaintiff, as opposed to the weight given to a plaintiff's choice  
26 of forum. In Savory, the SEC sued Savory Industries, Inc., S.  
27 Mort Zimmerman, and others in the District of Columbia. Savory,  
28 587 F.2d at 1152. Zimmerman moved to transfer venue to the

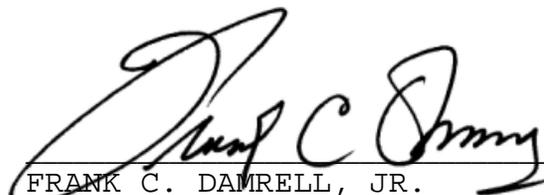
1 Northern District of Texas. Id. at 1153. The district court  
2 denied the motion without comment. Id. On appeal, one of  
3 Zimmerman's arguments was that the SEC's choice of forum should  
4 be accorded little, if any, significance because the SEC had an  
5 office in the Northern District of Texas. Id. at 1155. The  
6 appellate court disagreed. It ruled that an office in the  
7 transferee district was not a compelling factor. Id. at 1156.  
8 The court finds similarly here, particularly given the extensive  
9 nature of this federal investigation, which has been performed by  
10 law enforcement officers in this district and which has  
11 generated, to date, twelve related cases pending in this  
12 district.

13 **CONCLUSION**

14 Claimants have not met their burden to show that the  
15 convenience of the parties and witnesses and the interests of  
16 justice warrant transfer of this case. Therefore, claimants'  
17 motion for transfer of venue is DENIED.

18 IT IS SO ORDERED.

19 DATED: June 25, 2007.

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FRANK C. DAMRELL, JR.  
UNITED STATES DISTRICT JUDGE  
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# Exhibit 2

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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

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11 JANET YOUNG and EDWARD  
12 YOUNG,

NO. CIV. S-05-1639 FCD GGH

13 Plaintiffs,

14 v.

MEMORANDUM AND ORDER

15 COASTAL ISLAND CHARTERS,  
16 MICHAEL BAUER, and LORI  
BAUER,

17 Defendants.

18 -----oo0oo-----

19 This matter is before the court on defendants Coastal Island  
20 Charters, Michael Bauer and Lori Bauer's (collectively,  
21 "defendants") motion for transfer of venue pursuant to 28 U.S.C.  
22 § 1404(a).<sup>1</sup> Defendants do not challenge the propriety of venue  
23 in the Eastern District of California, but argue that the United  
24 States District Court of Alaska is the more convenient forum.  
25 Plaintiffs Janet Young and Edward Young ("plaintiffs") oppose the  
26

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27 <sup>1</sup> Because oral argument will not be of material  
28 assistance, the court orders this matter submitted on the briefs.  
See E.D. Cal. Local Rule 78-230(h).

1 motion arguing that the balance of factors weigh heavily in their  
2 favor, meriting retention of the case in this district.

3 For the reasons set forth below, the court DENIES  
4 defendants' motion. While the operative facts of the incident  
5 occurred in Alaska, plaintiffs' choice of forum should be  
6 afforded substantial deference since defendants personally  
7 solicited plaintiffs' business in this district on numerous  
8 occasions and the contract forming the basis of the parties'  
9 relationship was entered into here.

10 **BACKGROUND**

11 This is an action for negligence by common carrier,  
12 negligence and loss of consortium filed by plaintiffs against  
13 defendant Coastal Island Charters ("Coastal") and its owners  
14 defendants Michael and Lori Bauer (the "Bauers"). (Compl., filed  
15 Aug. 16, 2005.) The premise of Coastal's business is to share  
16 the Bauers' love of fishing and exploring the beautiful Southeast  
17 Alaska. (L. Bauer Decl., filed Oct. 25, 2005, ¶ 3.)

18 In January 1998, plaintiffs first met the Bauers at the  
19 Sportsman's Expo in San Mateo, California. The Bauers were  
20 soliciting for fishing trips they ran in Alaska. Plaintiffs  
21 agreed to purchase a trip and went on the trip with the Bauers in  
22 the summer of 1998. (J. Young Decl., filed Nov. 15, 2005, ¶ 2.)

23 Thereafter, on a number of occasions between 1998 and 2004,  
24 plaintiffs personally met with the Bauers at the Sportsman's Expo  
25 in either San Mateo or Sacramento, California. Again, on these  
26 occasions, the Bauers were soliciting business for their fishing  
27 trips. Plaintiffs attest that at least once every year between  
28 1998 and 2004, and probably more, the Bauers solicited business

1 at a Sportsman's Expo in Northern California. (Id. at ¶ 3.)

2 On January 18, 2004, plaintiffs again met the Bauers at the  
3 Sportsman's Expo in Sacramento and contracted for a five-day  
4 fishing trip for the summer. That day, plaintiffs wrote a  
5 \$2,000.00 check to the Bauers as a deposit for the trip. (Id. at  
6 ¶ 4.)

7 While on the trip, on June 18, 2004, plaintiff Janet Young  
8 was in the dining/main room of the Bauers' boat.<sup>2</sup> At that time,  
9 the only other person in the room was the Bauers' employee, Ms.  
10 Kelly. Ms. Kelly opened a hatch in the floor while plaintiff's  
11 back was turned. Plaintiff alleges Ms. Kelley did not say or do  
12 anything to warn her of the hazard. When plaintiff turned back  
13 around, she fell through the open hatch and shattered her ankle.  
14 (Id. at ¶ 5.)

15 According to defendants, Ms. Kelly was preparing to store  
16 the morning catch in a freezer below the main salon deck. (L.  
17 Bauer Decl., ¶ 18.) As is the crew's custom and practice,  
18 alleges defendants, Ms. Kelly announced aloud, "I'm opening the  
19 hatch," then opened the hatch while plaintiff was standing a  
20 short distance away. (Id. at ¶ 19.) Plaintiff walked into the  
21 open hatch and injured her right ankle. (Id. at ¶ 20.)

22 The boat returned to Sitka, Alaska, approximately 5 hours  
23 away, in order to seek medical treatment for plaintiff's ankle.  
24 (Id. at ¶ 21.) Once at the dock, while the paramedics and EMTs  
25 from Sitka were seeing to plaintiff, defendants allege plaintiff

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27 <sup>2</sup> The other passengers onboard included Eddie Young,  
28 plaintiffs' son, and Dennis Meeno, a business associate of  
plaintiffs.

1 stated to the medical personnel that the incident was "nobody's  
2 fault" and it was clearly an accident. (Defs.' Counsel's Decl.,  
3 filed Oct. 25, 2005, ¶ 3.)

4 Plaintiff was then transported to the Sitka Medical Center  
5 by ambulance where she was seen by Dr. John Totten, the on-call  
6 surgeon. (L. Bauer Decl., ¶ 24.) Dr. Totten informed plaintiff  
7 that he was capable of performing the surgery on plaintiff's  
8 foot. (Id. at ¶ 25.) He also discussed with plaintiff whether  
9 he believed it was advisable and necessary to have plaintiff  
10 transported by Medivac to a hospital in California. (Id.) At  
11 plaintiff Edward Young's request, a Medivac plane was summoned,  
12 and Janet Young was air-lifted to a medical facility in  
13 Sacramento. (Id. at ¶ 27.)

14 The Bauers have lived full-time in Alaska since 1976.  
15 Besides the Bauers, Coastal's only other crew member at the time  
16 of the incident was Ms. Kelly, a twenty-eight year old deckhand.  
17 (Id. at ¶ 5.) Ms. Kelly lives in Alaska from June through  
18 September and in Eatonville, Washington from October through May  
19 where she serves as a care provider for disabled individuals.  
20 (Id. at ¶ 6.)

21 Coastal is a business organized under the laws of the State  
22 of Alaska with its principal executive office, located for the  
23 last eleven years, in Wrangell, Alaska. (Id. at ¶s 7-8.)  
24 Coastal has never had any operations, office or telephone number  
25 in California. (Id. at ¶ 9.) The boat at issue, the *MV*  
26 *Huntress*, is a 60-foot vessel owned by the Bauers and regularly  
27 used during the months of May through September to charter  
28 fishing trips in the waters off of the coast of Alaska. (Id. at

1 ¶ 10.) Since the Bauers purchase of the *MV Huntress*, it has only  
2 been registered and documented in the State of Alaska. (Id. at ¶  
3 11.) The money earned from fishing charters during the months of  
4 May to September is the Bauers' only source of income. (Id. at ¶  
5 13.)

#### 6 STANDARD

7 Under 28 U.S.C. § 1404(a), a district court may "for the  
8 convenience of parties and witnesses, in the interest of justice  
9 . . . transfer any civil action to any other district where it  
10 might have been brought." 28 U.S.C. § 1404(a). A defendant  
11 moving to transfer venue under section 1404(a) must therefore  
12 satisfy both of the following requirements: (1) the transferee  
13 district is one in which the action might have been brought  
14 originally; and (2) transfer will enhance the convenience of the  
15 parties and witnesses, and is in the interests of justice. See  
16 Van Dusen v. Barrack, 376 U.S. 612, 616 (1964).

17 In considering the second requirement, the court evaluates  
18 the following:

19 (1) the location where the relevant agreements  
20 were negotiated and executed, (2) the state that  
21 is most familiar with the governing law, (3)  
22 the plaintiff's choice of forum, (4) the respective  
23 parties' contacts with the forum, (5) the  
24 contacts relating to the plaintiff's cause of  
25 action in the chosen forum, (6) the differences  
26 in costs of litigation in the two forums, (7)  
27 the availability of compulsory process to compel  
28 attendance of unwilling non-party witnesses, and  
(8) ease of access to sources of proof.

25 Jones v. GNC Franchising, Inc., 211 F.3d 495, 498-99 (9<sup>th</sup> Cir.  
26 2000).



1 Van Dusen, 376 U.S. at 637-39 (when transfer is granted under  
2 § 1404(a), the transferee court in a diversity action must apply  
3 the law of the state in which the action was originally filed).

4 Third, where a plaintiff's choice of forum is his place of  
5 residence, as in this case, a defendant must make a "strong  
6 showing of inconvenience to warrant upsetting the plaintiff's  
7 choice of forum." Decker Coal Co. v. Commonwealth Edison Co.,  
8 805 F.2d 834, 843 (9<sup>th</sup> Cir. 1986). Here, defendants have not  
9 done so. While they maintain that participating in litigation in  
10 this district would be detrimental to their "small" business,  
11 plaintiffs' unrebutted testimony of the Bauers' personal presence  
12 in this district, and within Northern California generally, to  
13 solicit business belies defendants' contentions. Because it  
14 appears that defendants regularly conduct business in this  
15 district to recruit clients, they cannot persuasively argue that  
16 it would be a detriment to their business to be a party to  
17 litigation in this district. Indeed, a Northern California venue  
18 would seem expected given the extent and frequency of defendants'  
19 contacts with Northern California.

20 Additionally, defendants have not shown that the convenience  
21 of the relevant non-party witnesses favors Alaska. Defendants  
22 concede that plaintiffs' son and business associate (both present  
23 on the trip) and plaintiff's surgeon, treating physician and  
24 other healthcare providers reside in California. Yet, defendants  
25 argue that, more importantly, Ms. Kelly, the central person  
26 involved in the incident, the two Sitka EMTs, whom defendants  
27 allege overheard plaintiff state the incident was "nobody's  
28 fault," Dr. Trotten, and the "Medivac pilot" live in Alaska.

1 Defendants' argument, however, is unavailing because it misstates  
2 the facts and/or emphasizes witnesses who are not central to this  
3 case. Regarding Ms. Kelly, by defendants' own admission, she  
4 lives only *part-time* in Alaska; outside of the fishing season  
5 (May to September), she lives in the State of Washington. Thus,  
6 her residence is of limited importance in resolving the dispute  
7 over convenience between California and Alaska. As to plaintiff  
8 Janet Young's alleged statement to the Sitka EMTs, defendants  
9 have not provided admissible testimony on this issue, and  
10 therefore the court does not consider it in ruling on the motion.  
11 Cochran v. NYP Holdings, Inc., 58 F. Supp. 2d 1113, 1119 (C.D.  
12 Cal. 1998) ("the moving party must demonstrate, through  
13 affidavits or declarations containing *admissible evidence*, who  
14 the key witnesses will be and what their testimony will generally  
15 include") (emphasis added.)<sup>3</sup> Finally, regarding Dr. Totten and  
16 the unnamed "Medivac pilot," their involvement in this case is  
17 minimal, and as such, the convenience of these witnesses does not  
18 weigh heavily in the analysis.

19 In sum, on balance, the majority of the critical non-party  
20 witnesses reside in California, rendering this factor in favor of  
21 plaintiffs. Taken in combination with plaintiffs' *choice* of this  
22 forum and defendants' contacts with the forum, particularly in  
23 this district, the court finds that this factor weighs  
24 considerably in favor of retention of this case in this district.

25 Fourth, regarding the relevant costs, because of the  
26 location of the majority of witnesses, and considering the

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28 <sup>3</sup> The court considers herein plaintiffs' objections only  
as they pertain to facts relevant to the court's decision.

1 Bauers' frequent business travels to California, it would likely  
2 be more costly to litigate this case in Alaska. The court is  
3 mindful of the fact that the subject boat is located in Alaska  
4 and that part of the discovery in this matter may require travel  
5 to Alaska to view and inspect the boat. However, that fact  
6 alone, when considered on balance with the other issues discussed  
7 herein, does not merit transfer of venue.

8 Finally, for similar reasons, defendants' showing with  
9 regard to access to sources of proof is also unavailing.

10 Initially, the court notes that defendants concede that the  
11 location of the documentary evidence in this case does not  
12 significantly favor either forum; some of the relevant  
13 documentary evidence is in Alaska, including documents regarding  
14 the *MV Huntress* itself and Coastal's business, while other  
15 documentary evidence is in California, including plaintiff's  
16 medical records. Thus, there is no basis to assume that it would  
17 be any more convenient or less burdensome to transport the  
18 relevant documents to Alaska rather than to California.

19 Setting aside the documentary evidence, defendants solely  
20 base their argument on the need for access to the *MV Huntress*  
21 itself, both during the course of discovery and at trial (for  
22 review by the jury). As stated above, while inspection of the  
23 boat may be necessary by the parties, their attorneys, and  
24 experts during discovery, this fact alone does not warrant a  
25 transfer of venue. As to any inspection by the jury at trial,  
26 defendants have not demonstrated why diagrams, pictures, models,  
27 reports, and records could not provide ample evidence for the  
28 trier of fact; moreover, absent extraordinary circumstances, such

1 a request for an actual inspection of the boat by the jury would  
2 likely be denied by a court, be it in Alaska or California.

3 Therefore, for all of the above reasons, the court DENIES  
4 defendants' motion to transfer venue because defendants have not  
5 met their burden to show that the convenience of witnesses and  
6 interests of justice warrant transfer of this case.

7 IT IS SO ORDERED.

8 DATED: December 12, 2005

9  
10 /s/ Frank C. Damrell Jr.  
11 FRANK C. DAMRELL, Jr.  
12 UNITED STATES DISTRICT JUDGE  
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